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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------|-------------|----------------------|---------------------|------------------|
| 09/752,372 | 12/29/2000 | Jacob Christensen | 1020.P10205 | 1521 |
| 57035 | 7590 | 01/26/2007 | EXAMINER | |
| KACVINSKY LLC | | | HYUN, SOON D | |
| C/O INTELLEVATE | | | | |
| P.O. BOX 52050 | | | ART UNIT | PAPER NUMBER |
| MINNEAPOLIS, MN 55402 | | | 2616 | |

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 01/26/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/752,372

Applicant(s)

CHRISTENSEN, JACOB

Examiner

Soon D. Hyun

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-8, 10-14, 17-19, 22-24, 27, 31-39 and 45-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-8, 10-14, 17-19, 22-24, 27 and 31-39 is/are allowed.
- 6) ☒ Claim(s) 45 and 47 is/are rejected.
- 7) ☒ Claim(s) 46 and 48 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 45 and 47 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 45 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruckman (U.S. Patent No. 6,891,855) in view of AAPA (Applicant Admitted Prior Art).

Bruckman discloses that a method to manage packet fragmentation, comprising:
determining an operating parameter for a packet, wherein the operating parameter represents a current data rate, maximum permitted delay set by user, and a priority level of a packet (high or low priority), i.e., a dynamic fragmenter (28 in FIG 1) determines a priority level of a packet (high or low priority) and the current data rate (col. 5., lines 6-24);

determining a packet fragment size using the current data rate and the maximum permitted delay (see the equation in col. 5, lines 10-11), if the packet has a low priority.

However, Bruckman teaches one type of low priority (the maximum permitted delay has one value 5 ms at each data rate, see TABLE 1 in col. 5) when Dynamic fragmentation is implemented.

AAPA (specification page 9, lines 16-17) teaches that a packet fragment size is typically dependent upon connection speed (data rate) and priority level of packets.

Those of skill in the art would have been motivated by AAPA to incorporate a plurality of priority levels for the low packets of Bruckman with a corresponding maximum permitted delay (less maximum permitted delay for higher priority level) for each data rate (connection speed) to control queue delay more efficiently, wherein it is inherent that the packet fragment size decreases as the priority level increases (the maximum permitted delay is decreases) or the packet fragment size increases as the priority level decreases (the maximum permitted delay is increases).

Therefore, it would have been obvious to one having ordinary skill in the art to incorporate a plurality of priority levels for the low priority packets of Bruckman to control queue delay more efficiently.

Allowable Subject Matter

4. Claims 3-8, 10-14, 17-19, 22-24, 27, 31-39 are allowed.

Claims 46 and 48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

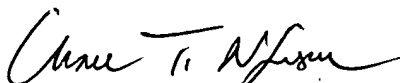
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Soon D. Hyun whose telephone number is 571-272-3121. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris H. To can be reached on 571-272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


S. Hyun
1/9/2007


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